

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

EXPRESS MOBILE, INC.,

Plaintiff,

v.

BIGCOMMERCE, INC.,

Defendant.

Civil Action No. 2:17-cv-00160

JURY TRIAL DEMANDED

DEFENDANT’S AMENDED MOTION TO DISMISS FOR IMPROPER VENUE

Improper Venue: *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, No. 16-341, 2017 WL 2216934, at *1 (U.S. May 22, 2017) reaffirmed *Stonite Prods. Co. v. Melvyn Lloyd Co.*, 315 U.S. 561 (1942) which held patent venue improper in WDPa for Stonite Products Co., a company incorporated in Pennsylvania which lacked a place of business in WDPa. BigCommerce is incorporated in Texas but lacks a single place of business in EDTX. Ex. A. That makes BigCommerce today’s Stonite. Accordingly, venue in EDTX is improper. Indeed, Express Mobile, Inc. has not alleged and cannot allege any facts placing any BigCommerce “place of business,” however that term is interpreted, within this District.

Transferee Court: After *TC Heartland*, which reaffirmed *Stonite*, the proper venue in this case is no longer a decision under the convenience jurisprudence of Sec. 1404. Rather, this motion presents a decision between NDCA—the *bona fide* backyard of Plaintiff and the only logical venue for adjudicating a patent infringement dispute against BigCommerce—and WDTX, the only other proper patent venue over BigCommerce. 28 U.S.C. § 1406(a) states, “if it

be in the interest of justice, [the district court shall] transfer such case to any district or division in which it could have been brought.”

BigCommerce’s only places of business in the United States are in San Francisco, California (NDCA) and Austin, Texas (WDTX). Ex. A. The technical nerve center of BigCommerce is located in San Francisco, California, rendering NDCA the technical hub of the company. Consider, for example, that every member of BigCommerce’s top level of technical leadership works in the San Francisco office:

- Brian Dhatt, **Chief Technology Officer (CTO)**, is responsible for all aspects of the architecture, systems design, and operations of the BigCommerce service.
- Brandon Golm, **VP Engineering**, is responsible for front and back end development of the BigCommerce platform.
- Scott Baker, **VP Technical Operations**, is responsible for operations, performance, and security of the BigCommerce platform.
- Jimmy Duvall, **Chief Product Officer (CPO)**, is responsible for all product strategy, product roadmap, design, and program management office.
- Troy Cox, **Senior Director, Product Management**, is responsible for the developing, defining and overseeing the BigCommerce product roadmap.

See Ex. A. Other senior executives work in San Francisco as well:

- Alexandra Shapiro, **Chief Marketing Office**, is responsible for all aspects of the company’s marketing.
- Russell Klein, **SVP of Corporate Development**, is responsible for all business development and third party strategic relationships across the company.

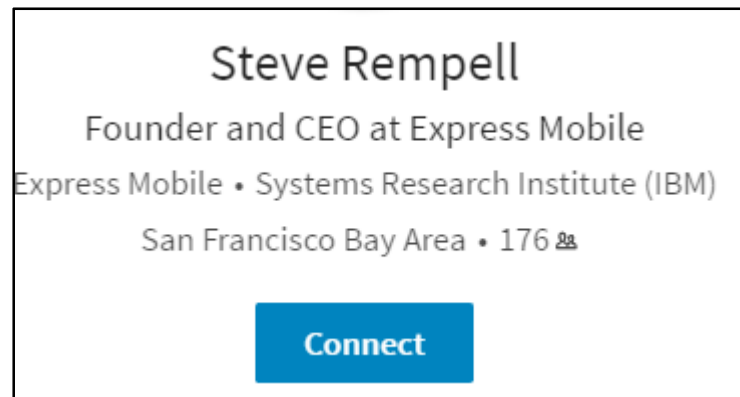
See Ex. A.

These are the key decision makers of BigCommerce for its technology. Moreover, among the 21 employees who report directly to the CTO or CPO, 14 work in the San Francisco office, 5 work in the Sydney office, and only two work in the Austin office. This is a patent lawsuit, not a securities lawsuit. Any patent infringement lawsuit naturally implicates BigCommerce’s

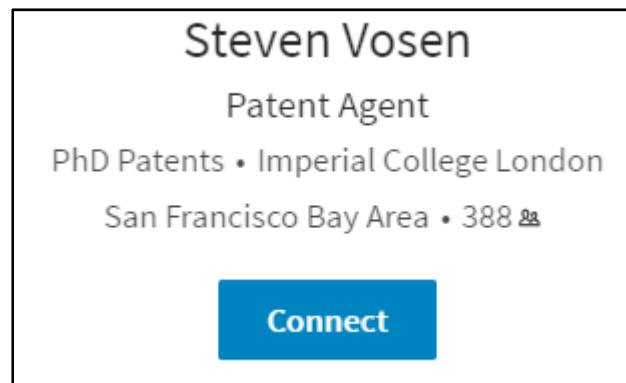
technology. The people who make key decisions for BigCommerce's deployment, development, and maintenance of its technology are all in San Francisco, CA in NDCA.

BigCommerce's Austin presence includes lower-level, non-executive technical employees and upper management for corporate and finance. For a patent infringement matter, between NDCA and WDTX, the interests of justice point to NDCA as the proper transferee district.

And it is not just BigCommerce for whom the selection of NDCA as the appropriate transferee forum is in the interests of justice under Sec. 1406. The founder of Express Mobile, the CEO of Express Mobile, and the inventor of the patents-in-suit, Steve Rempell, lives in NDCA, as evidenced by his LinkedIn profile:



Express Mobile's patent prosecutor lives there too.



Express Mobile's headquarters and principal place of business is in NDCA.



Express Mobile's "Texas ties," are purely litigation-driven. On April 2, 2015, Express Mobile's patent litigator, Robert Kiddie, registered Express Mobile, Inc. with the Texas Sec. of State. The evidence indicates that nothing connecting Express Mobile to the entire state of Texas has any non-litigation purpose.

EXPRESS MOBILE INC. DBA XPRESSMO, INC.	
Texas Taxpayer Number	32056826863
Mailing Address	2421 MCCOOK DR GEORGETOWN, TX 78626-8153
? Right to Transact Business in Texas	ACTIVE
State of Formation	DE
Effective SOS Registration Date	04/02/2015
Texas SOS File Number	0802186511
Registered Agent Name	ROBERT KIDDIE
Registered Office Street Address	2421 MCCOOK DRIVE GEORGETOWN, TX 78626

The mailing address Express Mobile elected to present to the Texas Secretary of State as its business address—2421 McCook Drive, Georgetown TX, 78626—is not a business address at all. It is, instead, Express Mobile’s patent litigator Robert Kiddie’s home address.

The screenshot shows the Williamson County Tax Assessor Collector website. The header includes the county logo and navigation links: HOME, PUBLIC ACCESS HOME, TAX ESTIMATOR, and MORE RESOURCES. Below the header is a 'Property Search' section with a text input field containing 'Enter any combination of name, address, or property identifier' and a search button. Below the search bar, a table displays the search results:

Property	Owner	Property Address
R458011	KIDDIE, ROBERT DEAN, JR	2421 MCCOOK DR GEORGETOWN, TX 78626

The registration date of the business, April 2, 2015, is interesting in that *one business day*—Friday, April 3, 2015—separates Express Mobile Inc.’s birth in the state of Texas and a multi-year patent litigation campaign in this district.

April 2015

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
5	6	7	8	9	10	11

Express Mobile, Inc. is born in Texas.

Express Mobile, Inc. starts a two-year 20+ company patent enforcement campaign.

Red lines connect the date 2 (Thursday) to the first statement and the date 6 (Monday) to the second statement.

Name	Number	District	Filed
Express Mobile Inc. d/b/a Xpressmo, Inc. v. Alibaba.com, Inc. et al	2-15-cv-00461	TXED	April 6, 2015
Express Mobile Inc. v. BigCommerce, Inc.	2-16-cv-00384	TXED	April 8, 2016
Express Mobile, Inc. v. Webs, Inc.	1-16-cv-00160	TXED	May 23, 2016
Express Mobile, Inc. v. Webs, Inc.	2-16-cv-00558	TXED	May 25, 2016
Express Mobile, Inc. v. Jiva Infotech, Inc. d/b/a I95DEV	2-16-cv-00775	TXED	July 15, 2016
Express Mobile, Inc. v. Amplifi Commerce, LLC	2-16-cv-00811	TXED	July 20, 2016
Express Mobile, Inc. v. Weebly, Inc	2-16-cv-00906	TXED	August 15, 2016
Express Mobile, Inc. v. Digital Evolution Group, LLC	2-16-cv-00922	TXED	August 19, 2016
Express Mobile, Inc. v. Astound Commerce Corporation	2-16-cv-00923	TXED	August 19, 2016
Express Mobile, Inc. v. OSF Global Services Inc.	2-16-cv-00924	TXED	August 19, 2016
Express Mobile, Inc. v. Blue Acorn, Inc.	2-16-cv-01411	TXED	December 15, 2016
Express Mobile, Inc. v. Guidance Solutions, Inc.	2-16-cv-01412	TXED	December 15, 2016
Express Mobile, Inc. v. Coalition Technologies LLC	2-16-cv-01413	TXED	December 15, 2016
Express Mobile, Inc. v. Lyons Holding Co. Inc. et al	2-16-cv-01414	TXED	December 15, 2016
Express Mobile, Inc. v. Volusion, LLC et al	2-17-cv-00064	TXED	January 19, 2017
Express Mobile, Inc. v. WaveMaker, Inc. et al	2-17-cv-00065	TXED	January 19, 2017
Express Mobile, Inc. v. Alpine Consulting, Inc.	2-17-cv-00126	TXED	February 14, 2017
Express Mobile, Inc. v. Forix LLC	2-17-cv-00127	TXED	February 14, 2017
Express Mobile, Inc. v. KTree Computer Solutions Inc.	2-17-cv-00128	TXED	February 14, 2017
Express Mobile, Inc. v. Optaros, Inc.	2-17-cv-00129	TXED	February 14, 2017
Express Mobile, Inc. v. Svanaco, Inc.	2-17-cv-00130	TXED	February 14, 2017
Express Mobile, Inc. v. BigCommerce, Inc.	2-17-cv-00160	TXED	February 27, 2017

Express Mobile's Plano, Texas location recited in the Complaint—3415 Cluster Rd. Suite 104, Plano, TX 75023—is an intriguing location. Complaint at ¶ 2.

For starters, the office is in building #2 of Custer Office Park.



<http://www.copplano.com/kiosk-main/>

That office building lists its tenants on a webpage they represent as current (2017).

Building 2

#100 Myar Lonestar Solutions LLC	#118 The Right Touch Massage Therapy	#161 Teresa Hunter / Sterling Insurance
#101 James R Adams	#119 F3 Inc.	#182 Winston Floors
#102 23 Triton General Contractor LLC.	#120 Encoditech LLC	#184 CurryCo Inc
#104 DSS Technology Management Inc	#122 North Texas Property Mngmt / DFW Eviction Services LLC.	#185 David E Solsberry / Service Master
#105 Primary Residential Mortgage Inc	#126 Vacant	#187 Stephen Scannell / Andy on Call
#106 Tan Wei / Sunset Insurance Services LLC.	#140 Yuntang Gao 7 FirstUSA Real Estate	#188 Sayre Oil LLC
#107 Parker Brothers Plumbing	#141 Big Blue Enterprises, LLC	#189 The Best Insurance Agent
#111 North American Vehicle Transport Inc. / NAVT Inc.	#150 Hector Rivera	#190 Distinctive Marketing
#112 Darwin D Washington	#151 Sean William Thorpe	#194 Goosehead Insurance / Brenda Carmona Canales
#114 Shannons Personnel SVC Inc	#152 Greater Dallas USBC Association / Diane Morgan / Bowling Association Office	#195 Jennifer Perez / Dabble Dare LLC
#117 Advithuri Technologies LLC	#153 William Thomas Ortiz	#196 On the Spot Cleaning

<http://www.copplano.com/kiosk-building-2/>

Room 104, listed on Express Mobile's Complaint as *its* place of business, Complaint at ¶ 2, is actually listed as the office DSS Technology Management, Inc.

Building 2

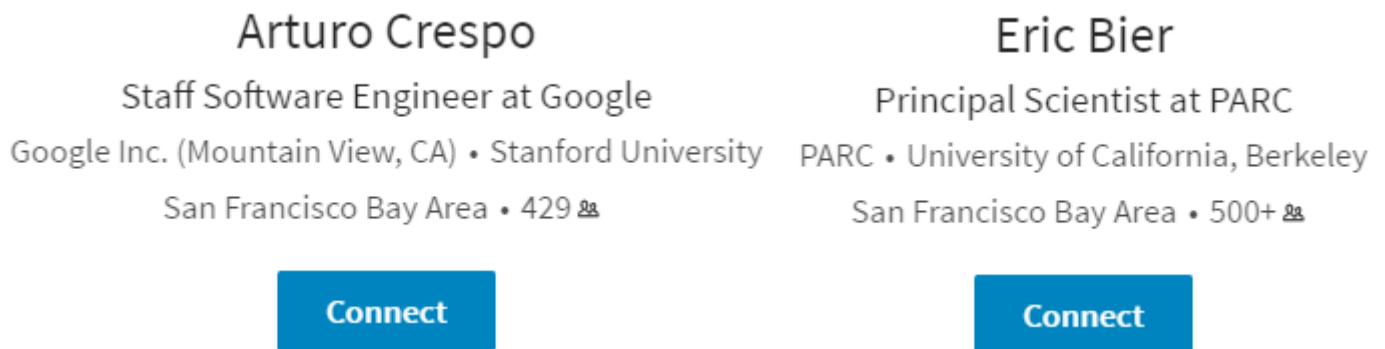
#100 Myar Lonestar Solutions LLC
 #101 James R Adams
 #102 23 Triton General Contractor LLC.
 #104 DSS Technology Management Inc

DSS Technology Mgt., Inc. is a company that has filed a number of patent enforcement actions in the Eastern District of Texas.

Name	Number	District	Filed
DSS Technology Management, Inc. v. Apple, Inc.	6-13-cv-00919	TXED	November 26, 2013
DSS Technology Management, Inc. v. Taiwan Semiconductor Manufacturin...	2-14-cv-00199	TXED	March 10, 2014
DSS Technology Management, Inc. v. Lenovo (United States), Inc.	6-14-cv-00525	TXED	May 30, 2014
DSS Technology Management, Inc. v. Intel Corporation et al	6-15-cv-00130	TXED	February 16, 2015
DSS Technology Management, Inc. v. Samsung Electronics Co., Ltd. et al	6-15-cv-00690	TXED	July 16, 2015
DSS Technology Management, Inc. v. SK Hynix, Inc. et al	6-15-cv-00691	TXED	July 16, 2015
DSS Technology Management, Inc. v. Qualcomm Incorporated	6-15-cv-00692	TXED	July 16, 2015
DSS Technology Management, Inc. v. Intel Corporation et al	6-16-cv-00197	TXED	February 16, 2015

These facts stated above render it entirely farcical for Express Mobile to argue that its *own* Texas ties warrant a preference for WDTX over NDCA.

Finally, two key prior art reference authors, Eric Bier and Arturo Crespo, authors of *WebWriter: A Browser-Based Editor for Constructing Web Applications*, Computer Networks and ISDN Systems (May 1996) vol. 28 no. 7-11, p. 1291-306 both reside in NDCA.



See <https://www.linkedin.com/in/ericbier/>; <https://www.linkedin.com/in/acrespo/>.

Finally, the identical patent claims at issue in this action are involved in litigation in NDCA which has a patent pilot program. *X Commerce, Inc. v. Express Mobile, Inc.*, No. 3-17-cv-2605 (N.D. Cal. May 5, 2017); *see also* <http://www.cand.uscourts.gov/patentpilot>. No related case is pending in WDTX. If this case is transferred to NDCA, it is quite likely that the matters will be consolidated in NDCA and the same district judge can address the myriad of issues common to the claims-in-suit.

In light of the voluminous ties that both parties *and* various non-parties have to the NDCA, BigCommerce requests a transfer to the Northern District of California as relief for improper venue under FRCP 12(b)(3).

Dated: June 2, 2017

Respectfully submitted,

/s/ Amit Agarwal

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*Attorneys for Defendant
BigCommerce, Inc.*

CERTIFICATE OF SERVICE

The undersigned certifies that on June 2, 2017, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3).

/s/ Bobby Lamb

Bobby Lamb